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From:

Sent: Thursday, October 21, 2010 8:39:01 AM

To:

Cc:

Subject: RE: TEFRA question

Section 6222 requires the partners to report the amount and allocation of liabilities consistent with the partnership return unless they file a Notice of Inconsistent Treatment on Form 8082. In the absence of such a filing we are permitted to make an assessment without issuing a FPAA. I.R.C. 6222(c). They filed no such notice here so we do not need to conduct a TEFRA proceeding to make the assessment. Since outside basis is an affected item requiring partner-level determinations, however, we would have to issue an affected item notice of deficiency in order to assess a distribution in excess of basis. In the stat notice proceeding they could arguably rely on Roberts v. Commissioner, 94 T.C. 853, 860 (1990) to allege that the partnership books and records reflect the nonrecourse debt in issue, their reporting is consistent with the actual partnership books and records, and that the Schedule K-1 issued to them was incorrect. Cf. Treas. Reg. 301.6222(b)-3 (incorrect schedule provided to partner).

Alternatively, either the affected partner or the partnership (or both) could file AARs under section 6227 to correct the reporting of nonrecourse debt.